

Mansi (Migration) [2021] AATA 3774 (8 September 2021)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANT:	Mrs - Mansi
CASE NUMBER:	1902295
HOME AFFAIRS REFERENCE:	BCC2017/915667
MEMBER:	Rosa Gagliardi
DATE:	8 September 2021
PLACE OF DECISION:	Australian Capital Territory
DECISION:	The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa: • cl 820.211 of Schedule 2 to the Regulation; and • cl 820.221 of Schedule 2 to the Regulations. • •

Statement made on 08 September 2021 at 5:02pm

CATCHWORDS

MIGRATION –Partner (Temporary) (Class UK) visa – Subclass 820 –long-term genuine relationship – parties validly married – genuine married relationship – mutual commitment to a shared life together – parties have a strong commitment to raising their child together – evidence provided – decision under review remitted

LEGISLATION

Migration Act 1958, ss 5F, 65

Migration Regulations 1994, rr 1.03, 1.15, Schedule 2, cls 820.211, 820.221

CASES

He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to refuse to grant the applicant a Partner (Temporary) (Class UK) visa under s 65 of the *Migration Act 1958* (Cth) (the Act).
2. The applicant applied for the visa on 8 March 2017 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the *Migration Regulations 1994* (Cth) (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl. 820.211 because there was a paucity of evidence demonstrating that the parties were in a genuine and continuing relationship. At the time of review, the parties have addressed this insufficiency with probative and credible material that persuades the Tribunal that the parties are in a spouse relationship as per s.5F of the Migration Act.
4. The applicant appeared before the Tribunal on 8 September 2021 over Microsoft Teams to give evidence and present arguments. The Tribunal also received oral evidence from the applicant's spouse, and sponsor, Mr Ashish Pabla. Mr Lovish Malhotra, the applicant's brother, also gave evidence. The Tribunal hearing was conducted with the assistance of an interpreter in the Punjabi and English languages.
5. The applicant was represented in relation to the review by her registered migration agent. The representative attended the Tribunal hearing.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

Whether the parties are in a spouse or de facto relationship

7. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. The Tribunal is satisfied that this is the case.
8. 'Spouse' is defined in s 5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s 5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in reg 1.15A(3), which is extracted in the attachment to this decision. Each of the specific matters contained in reg 1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.

Are the parties validly married?

9. If the parties are validly married, they may meet the requirements of a married relationship, but not a de facto relationship. The parties were married in India in a traditional marriage ceremony and they have submitted a marriage certificate demonstrating the marriage was registered on 27 January 2017. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s 5F(2)(a).

Are the other requirements for a spouse relationship met?

10. Background

11. The parties were honest at hearing in advising that their marriage had been instigated by their respective parents who responded to matrimonial advertisements in newspapers. Their parents, after consulting astrology, as is customary, considered the parties would make a good match. After having discussed the matter between themselves, the applicant and sponsor were then introduced to one another in August 2016. At that time the sponsor was living in Melbourne and the applicant in Canberra, however, the sponsor visited the applicant in Canberra to spend time with her and get to know her. They considered they had similar views on important aspects of life and thought they would be well-suited to forming a union.

12. Financial aspects of the relationship

13. The sponsor was working in Melbourne when the parties met, and the applicant in Canberra in food services for a major hospital. After the parties were married in India, they both moved to Melbourne. The applicant had taken leave of her work in Canberra and was finding it difficult to find employment in Victoria. After discussing their joint future, the sponsor was prepared to give up his employment in Melbourne for the applicant to resume her work at the hospital in Canberra. Eventually, the applicant assisted the sponsor to obtain employment in Canberra as a chef at the Department she was working in at the Canberra Hospital.
14. The Tribunal considers that the sponsor's willingness to leave his employment in Melbourne for the sake of the marriage is indicative of the strength of the commitment to the relationship. It also demonstrates that the parties had thought carefully about what would financially be mutually beneficial for them as a couple into the future.
15. The Tribunal has sighted a significant amount of material regarding the pooling of the parties' resources. These include a joint bank account from which the parties have paid for rent and other every day household items, including utilities.
16. In 2019 the parties purchased a land and house package in Canberra together, even though the applicant was not included on the title due to her residency status. The financial documentation submitted demonstrates that the mortgage is principally paid from their joint financial account.
17. From the verbal evidence at hearing it was apparent to the Tribunal that the parties share their day to day household expenses, and importantly share their resources for the benefit of their small family. In October 2019 the parties' daughter was born.

18. Nature of the Household

19. The Tribunal has sighted evidence of utilities in both names for the various addresses that the parties shared over the course of their marriage, including their current address at the property they have purchased.

20. The parties both now work to be able to accommodate their desire to care for their child at home. Hence, when the applicant works, the sponsor stays home to care for their daughter, and when the sponsor works, the applicant takes over care for their child.
21. At hearing the parties stated that the applicant took on more traditional roles such as cooking in the home, but it appeared that the sponsor did not have an expectation that the applicant always undertake these home duties, and that they supported one another in sharing household tasks and responsibilities.

22. *Social aspects of the relationship*

23. From the photographic evidence the Tribunal accepts that the parties had a large, traditional wedding in India which was well-attended, and which was recognised by both families. The applicant's brother who is an Australian resident also travelled to India to attend the wedding. At the hearing the applicant's brother stated that it had always been his dream to see his sister married and that it was very important he attend, given their mother was a single mother.
24. The parties work together in the preparation of food in the hospital in Canberra and the Tribunal accepts that the parties are viewed by their colleagues as being in a genuine and continuing spousal relationship. The photographs submitted to the Tribunal depict the parties and their young child in social contexts, including celebrating significant milestones.
25. The Tribunal is satisfied that the parties represent themselves to the wider community as being married to each other, and that together with their child, they are seen as a close family unit.

26. *Nature of persons' commitment to each other*

27. From the evidence at hearing it was evident to the Tribunal that the parties have a mutual commitment to the exclusion of others. The Tribunal places significant weight also on the fact that the parties have now been married well over three years and that they see their relationship as long-term. The Tribunal is satisfied that the parties have a strong commitment to raising their child together as spouses, and that they are sharing their resources to own their home and build a future for the family.
28. The Tribunal is satisfied that the parties have a genuine and continuing relationship and that they do not live separately and apart on a permanent basis. The strength of the evidence before the Tribunal leads it to be satisfied that the relationship meets the requirements of Regulation 1.15A in their entirety.

29. *Conclusion*

30. On the basis of the above, the Tribunal is satisfied that the requirements of s 5F(2) are met at the time the visa application was made and at the time of this decision.
31. Therefore, the applicant meets cl. 820.211(2)(a) and cl.820.221.
32. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

DECISION

33. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner) visa:

- cl.820.211(2)(a) of Schedule 2 to the Regulations; and
- cl. 820.221 of Schedule 2 to the Regulations.

Rosa Gagliardi
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).